IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.1545/2002.

Date of Decision :18.5.2007.

Phoolan Wati. …Petitioner.

Versus:

State of H.P.and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Naresh Kaul, Advocate

For Respondents-1 to 3. Mr.C.B.Singh, Dy.Advocate General.

For Respondent No.5. Mr.Baldev Singh, Central Govt.Counsel.

Sanjay Karol,J (Oral).

Late Shri Ram Lal Kohli, husband of petitioner-Smt. Phoolan Wanti while working as Head Master in Government High School, Rait, District Kangra, H.P. died on 15th January, 1958 after rendering service of eight years and seven months.

Pursuant to the decision rendered by H.P. Administrative Tribunal in O.A. No. 1576 of 1993 titled as M.L.Mahajan Vs. State of H.P. and others, the services rendered by the employees of the Education Department in the erstwhile District Board Schools were directed to be

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

counted for pensionery and other retiral benefits regardless of the fact as to whether the employees of the District Board Schools were contributing to C.P.F. or not.

Petitioner is a poor illiterate lady residing at her village. On 30th May, 1998, she learnt about her entitlement/rights and applied for grant of family pension. Her case was processed at various levels including respondents No. 3,4 and 5 and was finally sent by respondent No.3 to respondent No.2 recommending entitlement of the petitioner to the family pension under Rule 54(3) of CCS(CCA) Family Pension Rules 1972 as also the policy decision taken by the Government. It seems that the petitioner was made to move from pillar to post, without any fault of her but no action was taken on the petitioner's application except for grant of adhoc family pension w.e.f. 30th September, 1977. The petitioner is in receipt of the same, as per her entitlement, since then.

The grievance of the petitioner, however, is that she has not been granted pension from the date of her husband's death, who admittedly died in harness on 15th January, 1958. A perusal of the record shows that the District Eduction Officer, Kangra vide letter dated nil had infact recommended the case of the petitioner to the Director of Education (Pension Cell) as such.

Respondent No.5 also filed an affidavit dated 8.1.2003 stating therein that the case of the petitioner would be finalized on the receipt of the complete application. Respondent No.4 filed an affidavit dated 21.6.2003 stating that the case of the petitioner is specifically to be dealt with by respondents No.1 to 3 and 5. A perusal of Annexure:R-1 annexed with the affidavit would show that the petitioner has already been granted adhoc family pension @ 60/- w.e.f. 30.9.1977 to 31.12.1977, Rs.125/- w.e.f. 1.1.1978 to 31.12.1985, Rs.375/- w.e.f. 1.1.1986 to 31.12.1995 and Rs.1310/- w.e.f. 1.1.1996.

It is also clarified in the affidavit that the petitioner had not been submitting the documents, therefore, there has been delay. This fact, however, is disputed by the learned counsel for the petitioner. The learned counsel for the petitioner has relied upon *S.K.Mastan Bee Vs. General Manager, South Central Railway and another*, (2003) 1 Supreme Court Cases 184 to contend that since the petitioner's entitlement is not in dispute, therefore, the respondents ought to have granted pension to the petitioner in accordance with Family Pension Scheme and Rules w.e.f. 15th January, 1958 which is the date of the death of her husband.

It was the duty of the respondents to compute the family pension payable to the petitioner and offer the same to her without her having to make a claim or without driving her to litigation. The very denial of her right to family pension amounts to violation of Article 21 of the Constitution of India.

Keeping in view the over all facts and circumstances as also the judgment in *S.K.Mastan Bee* (Supra), it is directed that petitioner is entitled for family pension w.e.f. 15th January, 1958 which is the date of death of her husband. The respondents shall take steps forthwith to compute the arrears of family pension payable to the petitioner from the said date and pay the entire arrears within a period of four months from the date of the receipt of the order. The petitioner shall be entitled for interest on the same @ 6% per annum. If the amount is not paid within a period of four months, she shall be entitled to interest @ 12% per annum on the same. The writ petition is allowed.

(Sanjay Karol),
Judge.

May 18, 2007(R)